

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease W 48614-B.

Affirmed.

1. Notice: Generally – Regulations: Generally

All persons dealing with the Government are presumed to have knowledge of duly promulgated regulations.

2. Oil and Gas Leases: Rentals – Oil and Gas Leases: Termination

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease.

3. Accounts: Payments – Oil and Gas Leases: Rentals – Payments: Generally

Placing a check for annual rental for oil and gas leases in the mails does not constitute "payment" of annual rental. Rather, the lessee must cause the rental to be received by the office administering her leases, and, until such time as it is received, no "payment" of annual rental has occurred. Placing a check for annual rental for oil and gas leases in the mails does not constitute a tender of payment of annual rental within the meaning of 43 CFR

3108.2-1(c). Rather, a lessee makes a tender of payment only when she submits payment to the BLM office administering her leases and when BLM has the opportunity either to receive or decline it.

4. Oil and Gas Leases: Reinstatement – Oil and Gas Leases: Rentals

Reasonable diligence normally requires mailing the rental payment sufficiently in advance of the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail. Mailing the rental in Hollywood, California, 2 days before it is due in Cheyenne, Wyoming, does not constitute reasonable diligence.

APPEARANCES: Rose M. Keegel, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Ms. Rose M. Keegel appeals from the March 28, 1980, decision of the Wyoming State Office, Bureau of Land Management (BLM), which denied her petition for reinstatement of oil and gas lease W 48614-B, which had terminated automatically by operation of law when rental due for the lease year commencing March 1, 1980, was not paid on or before the anniversary date. ^{1/} The lease had issued March 1, 1975.

Appellant states that she mailed the check for the rental payment on March 1, 1980, but was unaware that payment had to be received by BLM on or before the due date. She maintains that the mailing date is generally accepted in the business world as the date of payment and that she had never been advised of the strict rules of BLM relative to rental payments.

[1] All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Edwin Forsberg, 47 IBLA 235 (1980).

[2] Section 31 of the Mineral Leasing Act, as amended by the Act of July 29, 1954, 30 U.S.C. § 188(b) (1976), provides that upon failure of a lessee to pay rental on or before the anniversary date of a lease on which there is no well capable of production of oil or gas in

^{1/} March 1, 1980, was a Saturday. Rental payments due that date had to be received in the proper BLM office on or before Monday, March 3, 1980. 43 CFR 3108.2-1(a).

paying quantities, the lease shall terminate automatically by operation of law. The regulations in 43 CFR 3108.2-1 implement this statute. Furthermore, section 17 of the Mineral Leasing Act, 30 U.S.C. § 226(d) (1976), requires that annual rental for oil and gas leases must be paid in advance.

Appellant misunderstands the situation in this case. BLM did not terminate the lease because the rental payment was received after the due date; the lease terminated automatically by operation of law when the anniversary date passed without rental payment being made. 30 U.S.C. § 188(b) (1976).

[3] Appellant contends that she made payment of the rental when she placed the rental check in the United States mail. There is no merit to this argument. Where a rental check is deposited in the mail and postmarked before, but arrives in a BLM office after, the due date for payment, this Board has repeatedly held that the payment is not timely, since payment is not made until the check actually arrives in the proper BLM office. Mobil Oil Corp., 35 IBLA 265 (1978); Richard L. Triplett II, 32 IBLA 369 (1977); Leonard A. J. Tancredi, 32 IBLA 325 (1977); David W. Gregg, 32 IBLA 293 (1977). Regulation 43 CFR 3103.1-2(a) requires that all oil and gas lease rentals must be paid to the authorized officer in the office of BLM which administers the lease in question. Until such time as the rental arrives at the proper BLM office, no "payment" has been made. Edward Malz, 24 IBLA 251, 83 I.D. 106 (1976). As the payment for the lease at issue arrived in the Wyoming State Office on March 4, 1980, the lease had already terminated since no payment had been made on or before the due date. ^{2/}

Termination of an oil and gas lease is required for failure to pay annual rental on or before the anniversary date of the lease even though the failure to make such payment is occasioned by the fault of postal employees and without fault of the lessee. Mike Abraham, A-27763 (Dec. 22, 1958). Both BLM and this Department have consistently and often held that there is no payment or tender of a lease rental by the mere act of placing a check in the mail, but rather that the check in the full amount of the rental must be timely received in the proper office. Mobil Oil Corp., supra, and cases cited therein.

30 U.S.C. § 188(c) (1976) provides that a lease terminated by operation of law for failure to pay rental on or before the anniversary date of the lease may be reinstated if the lessee can show that failure to pay was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. Where the lessee is unable to make the requisite showing, the petition for reinstatement is properly denied. Hary Zaslow, 46 IBLA 217 (1980); William A. Klug, 43 IBLA 255 (1979); James E. Kordosky, 43 IBLA 63 (1979); Ronald C. Hill, 38 IBLA 315 (1978).

^{2/} See n.1, supra.

[4] Reasonable diligence normally requires mailing the rental payment sufficiently in advance of the due date to account for normal delays in collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2). Accepting appellant's statement that she mailed the rental check on March 1, 1980, she did not exercise reasonable diligence in allowing only 2 days for the payment to reach Cheyenne, Wyoming, from Hollywood, California. This Board has considered this situation many times and has repeatedly held that mailing rental 2 days before the due date does not constitute reasonable diligence. Bob W. Scott, 46 IBLA 254 (1980); Harry Zaslow, *supra*; Norman C. Stroink, 44 IBLA 188 (1979); Reynolds Mining Corp., 39 IBLA 405 (1979). BLM properly denied the petition for reinstatement of lease W 48614-B.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

I concur.

Edward W. Stuebing
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING:

Appellant has submitted no evidence of time of mailing or mail service between the Hollywood, California, Post Office and Cheyenne, Wyoming. I concur that she has not shown reasonable diligence under Board decisions construing 43 CFR 3108.2-1(c)(2).

Joseph W. Goss
Administrative Judge

